

No. 15,281

United States Court of Appeals  
For the Ninth Circuit

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JOHN YANDELL,

*Appellant,*

VS.

TRANSOCEAN AIR LINES, a Corporation,

*Appellee.*

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BRIEF FOR APPELLANT.

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**STATEMENT OF JURISDICTION.**

This is an appeal from an order of the United States District Court, for the Northern District of California, Southern Division, Honorable Oliver J. Carter presiding, dismissing the within action.

The case involves an action for assault and battery alleged to have taken place on the 31st day of July, 1952, on Wake Island, an island owned by the United States of America. (Paragraphs III, IV and V of Complaint for Assault and Battery, pages 3 to 5 of Record on Appeal.)

The basis for the jurisdiction of the United States District Court is found in 48 U.S.C.A. 644a:

“The jurisdiction of the United States District Court for the District of Hawaii is extended to all civil and criminal cases arising on or within

the Midway Islands, Wake Island, Johnston Island, Sand Island, Kingman Reef, Kure Island, Baker Island, Howland Island, Jarvis Island, and having regard to the special status of Canton and Enderbury Islands pursuant to an agreement of April 6, 1939, between the Governments of the United States and of the United Kingdom to set up a regime for their use in common, the said jurisdiction is also extended to all civil and criminal cases arising on or within Canton Island and Enderbury Island: *Provided*, That such extension to Canton and Enderbury Islands shall in no way be construed to be prejudicial to the claims of the United Kingdom to said islands in accordance with the agreement. All civil acts and deeds consummated and taking place on any of these islands or in the waters adjacent thereto, and all offenses and crimes committed thereon, or on or in the waters adjacent thereto, shall be deemed to have been consummated or committed on the high seas on board a merchant vessel or other vessel belonging to the United States and shall be adjudicated and determined or adjudged and punished according to the laws of the United States relating to such civil acts or offenses on such ships or vessels on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks and keys.

“The laws of the United States relating to juries and jury trials shall be applicable to the trial of such cases before said district court.”

And in 28 U.S.C.A., Section 1333:

“The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

“(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.”

The basis for the jurisdiction of the United States Court of Appeals for the Ninth Circuit is found in 28 U.S.C.A. 1291 :

“The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.”

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#### **STATEMENT OF THE CASE.**

On July 31, 1952, on Wake Island, an island owned by the United States, appellant and an employee of the respondent became involved in an altercation, out of which arose the present action for damages for assault and battery.

On September 16, 1953, approximately one year, one and a half months from the date of the incident, appellant caused to be filed in the United States District Court for the Northern District of California, Southern Division, a complaint for assault and battery. (Pages 3-7 Transcript of Record.)

Thereafter, respondent filed an answer to said complaint, denying generally the allegations of the com-

plaint, and setting forth affirmatively the defense of laches. (Pages 7-12 Transcript of Record.)

The matter was set for trial and was heard by the Honorable Oliver J. Carter, Judge of the United States District Court. At the commencement of said trial the matter was transferred from the civil to the admiralty side of the court, and was tried in admiralty in October, 1955. (See Memorandum and Order, page 13, Transcript of Record.)

At the outset of the trial, counsel for respondent moved for judgment on the pleadings on the ground that the action was barred by the statute of limitations. This motion was taken under submission, ruling thereon reserved, and the matter was tried.

On August 2, 1956, Judge Carter rendered a "Memorandum and Order" dismissing the case on the grounds that the action was barred either by the statute of limitations or the doctrine of laches. (Transcript of Record, pages 13-16.)

The questions involved in this appeal are:

1. Whether the general maritime law of the United States is the law applicable to the case; and
2. Whether the statute of limitations of the State of California is as a matter of law applicable to the case.



**SPECIFICATION OF ERRORS.**

Appellant respectfully urges that the trial court erred in the following respects:

1. In applying the statute of limitations of the State of California, Section 340 (3) of the Code of Civil Procedure.

2. In adopting by analogy under the doctrine of laches, as a matter of law, the statute of limitations of the State of California, Section 340 (3) of the Code of Civil Procedure.

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**ARGUMENT.**

It is essentially appellant's position that the within action is one to be adjudicated and determined according to the general maritime law, and that under the maritime law the doctrine of laches is to be applied in accordance with all the equities of the case, and not by mechanically applying a state statute of limitations.

Section 644a of 48 U.S.C.A. specifically states that "All civil acts and deeds . . . shall be adjudicated and determined . . . according to the laws of the United States relating to such civil acts . . . on such ships or vessels on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks and keys."

That the laws of the United States referred to by Congress is the general maritime law of the United States is unquestionable. In *The Lottawana*, 21 Wall.

558, the Supreme Court of the United States, in discussing the maritime law, states as follows:

“That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States is extended ‘to all cases of admiralty and maritime jurisdiction. . . .’ One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have intended to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other and with foreign States.”

The saving clause contained in 28 U.S.C.A., Section 1333, does not alter the fact that all causes falling under the general maritime jurisdiction of Federal Courts are to be adjudicated and determined according to the general maritime law. Thus, in *Chelentis v. Luckenbach S. S. Co.*, 247 U. S. 372, at page 384, the Supreme Court states:

“The distinction between rights and remedies is fundamental. A right is a well-founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. (Bouvier’s Law Dictionary.) Plainly, we think,

under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common law standards rather than those of the maritime law."

And in *Jansson v. Swedish American Line*, 183 Fed. 2d 212, at 216, the Court states as follows:

"We take it now to be established by an impressive body of precedent that when a common law action is brought, whether in a State or in a Federal Court, to enforce a cause of action cognizable in admiralty, the substantive law to be applied is the same as would be applied by an admiralty Court — that is, the general maritime law, as developed and declared, in the last analysis, by the Supreme Court of the United States, or as modified from time to time by act of Congress."

See also *Roth v. Cox*, 210 Fed. 2d 76, 80.

It seems clear that whether an action is brought in the admiralty or the civil side of the Federal Court, the laws and rules governing the determination of such action, if it concern a right enforceable in admiralty, are the laws and rules as set forth in the general maritime law of the United States, and that the saving clause in 28 U.S.C.A. 1333 in no wise affects the application of the maritime law. This is clearly pointed out by the Court in *Cline v. Price*, 239 Pac. 2d 322, at 326:

“The saving clause, 28 U.S.C.A. 1333 (1) was never intended as a device whereby litigants could escape the uniform application of the established principles of admiralty law, as contemplated by the Constitution.”

Indeed, if the State Courts or the civil side of the Federal Courts were to apply different standards and rules, the very purpose of the saving clause would be obviated. Thus, in *Garrett v. Moore-McCormack Co., Inc., et al.*, 317 U. S. 239, the Court states:

“If by its practice the State Court were permitted substantially to alter the rights of either litigant, as those rights were established in Federal law, the remedy afforded by the State would not enforce, but would actually deny, Federal rights, which Congress, by providing alternative remedies, intended to make not less, but more secure.”

Thus, in the present case, the rights of the plaintiff are governed by the general rules of maritime law as is evidenced from the act in question, 48 U.S.C.A. 644a.

One of the basic and most fundamentally established principles of maritime law is that there is no statute of limitations barring the enforcement of a right recognized by admiralty. In lieu of any statute of limitations, the maritime law applies the doctrine of laches. What is laches has been set forth concisely by the Court in the case of *U. S. v. Alex Dussel Iron Works*, 31 F 2d 535, in which the Court states at page 536:

“Laches consist of two elements, inexcusable delay in instituting suit, and prejudice resulting to defendant from such delay. *Its existence depends upon the equities of the case, and not merely upon the lapse of time.*” (Emphasis added.)

That the trial court may by analogy adopt a local statute of limitations under proper circumstances is not questioned. To do so, however, the Court should not act mechanically, and apply the statute as a matter of law, as the Court did in the instant case, but rather should weigh the equities of the case, and require the showing of (1) inexcusable delay, and (2) resulting prejudice to the defendant.

Thus, in the recent case of *LeGate v. The Panamolga*, 221 F 2d 689, the Court states at page 691:

“We are not disposed, however, to mechanically apply the analogous state statute of limitation without regard to the equities.”

And further, on page 691:

“We remand the case to the District Court with a direction to reconsider the question of laches *placing the burden on the respondent to show inexcusable delay in filing the suit, with resulting prejudice to the respondents.*” (Emphasis added.)

The Supreme Court recently affirmed the position in the case of *Gardner v. Panama Railroad*, 342 U. S. 29. The Court stated at page 31:

“Though the existence of laches is a question primarily addressed to the discretion of the trial court, the matter should not be determined merely by a reference to and on a mechanical application



of the statute of limitations. *The equities of the parties must be considered as well. Where there has been no inexcusable delay in seeking a remedy and where no prejudice to defendant has ensued from the mere passage of time, there should be no bar to relief.*" (Emphasis added.)

It is obvious from the "Memorandum and Order" entered by Judge Carter (Transcript of Record, pages 13 to 16) that the Court mechanically applied the statute of limitations of the State of California, and failed to decide the matter on the equities, that is, no finding or showing is made either that the delay in bringing suit was inexcusable or that prejudice to the defendant resulted from the mere passage of time.

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### CONCLUSION.

It is respectfully submitted that this is a matter properly triable by maritime law, and that the Honorable District Court erred in dismissing the matter on the ground that laches existed as a matter of law. Appellant respectfully requests a reversal of said order, and a remanding of the matter for a new trial.

Dated, Oakland, California,

December 26, 1956.

Respectfully submitted,

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